

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CONSTELLATION NEWENERGY, INC.,	:	
	:	
Plaintiff,	:	Civil Action No. 02-CV-2733 (HB)
	:	
v.	:	
	:	
POWERWEB TECHNOLOGIES, INC.,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____, 2004, upon consideration of Motion In Limine to Challenge Authenticity of Certain Powerweb Trial Exhibits, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**.

Powerweb will not be permitted to introduce Exhibits 41, 71, 170, 171, 218, 230 and 231 at trial as it has not met its burden to establish authenticity.

Hon. Harvey Bartle, III, J.

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Plaintiff,	:	Civil Action No. 02-CV-2733 (HB)
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	:	
POWERWEB TECHNOLOGIES, INC.,	:	
	:	
Defendant.	:	

**MOTION IN LIMINE TO CHALLENGE AUTHENTICITY
OF CERTAIN POWERWEB TRIAL EXHIBITS**

NewEnergy hereby moves to preclude Powerweb Trial Exhibit Nos. 41, 71, 170, 171, 218, 230 and 231 on the basis of lack of authenticity. Fed. R. Evid. 901. NewEnergy relies upon the accompanying Memorandum of Law in support of this motion.

s/DL422

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Plaintiff,	:	Civil Action No. 02-CV-2733 (HB)
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POWERWEB TECHNOLOGIES, INC.,	:	
	:	
Defendant.	:	

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION IN LIMINE TO CHALLENGE AUTHENTICITY
OF CERTAIN POWERWEB TRIAL EXHIBITS**

NewEnergy hereby challenges the authenticity of the following Powerweb trial exhibits:

41. PW 67 - ALM Credit Purchase Agreement with Attached Budike Letter to Levine dated 10/25/99 (PW00063-PW00064) (Exhibit A hereto).

AUTHENTICITY OBJECTION:

NewEnergy asserts its objections to the authenticity of this document. There is insufficient evidence to support Powerweb's contention that this document was an enclosure to a letter to Steve Levine or that this document is a "contract."

71. PW 126 - No. 2 Printed from PW disk re: AES Demo Software dated 10/00/99 (PW05106) (Exhibit B hereto).

AUTHENTICITY OBJECTION:

NewEnergy asserts its objections to authenticity of this document. There is insufficient evidence to support Powerweb's contention that this document was a NewEnergy "demo."

170. Metz 2 - Chart Showing 2001 Capacity Volumes dated 2001 (TRG012)
(Exhibit C hereto).

171. Metz 3 - Chart Showing 2002 Actual Load in KW dated 2002 (TRG013)
(Exhibit D hereto)

OBJECTION:

These two documents are not authentic. According to Mr. Jeremy Metz of Verizon, and the person who Powerweb claims will authenticate them: these “documents” were prepared by a third party (Electrotek), were stored on that third party’s computer, and were generated by queries from Electrotek’s database performed by someone other than Mr. Metz. Mr. Metz did not know what database was used to produce the document or what data the computer contains. Metz Dep. 65:15-67:2; 68:2-7 (portions of Mr. Metz’s testimony are attached hereto as Exhibit E).

These two documents have no indicia of reliability.

218. NE 59 - Draft ALM Credit Purchase Agreement between SmithKline and (fill in the blank) (AB 000016-AB 000018) (Exhibit F hereto).

AUTHENTICITY OBJECTION:

NewEnergy asserts its objections to the authenticity of this document. There is insufficient evidence to support Powerweb’s contention that this document was a draft “contract” between SmithKline and unidentified and unnamed parties.

230. Powerweb’s Omni-Link LIPA site (live and/or CD).

AUTHENTICITY OBJECTION:

Powerweb’s OmniLink Website. This has not been identified or produced during testimony. We are unable to make any determination as to authenticity of this document or documents.

231. Powerweb’s CD’s (PW01204, PW02290, PW02328A, PW05106).

AUTHENTICITY OBJECTION:

“Powerweb CD’s” contain many documents and images. Powerweb has failed to identify particular documents and images, thus the “authenticity” is challenged. Moreover, there is inadequate evidence that the CDs contain actual information from the relevant time period as contrasted with documents and images that may have been created after the commencement of this case.

For all of the reason set forth above, NewEnergy respectfully requests that these documents be precluded from admission on the basis that they lack authenticity under Fed. R. Evid. 901. (NewEnergy reserves all other objections, including relevancy and hearsay).

Respectfully submitted,

s/DL422

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Attorneys for Plaintiff,

CERTIFICATE OF SERVICE

I certify that on August 6, 2004, I caused a true and correct copy of the foregoing Motion In Limine To Challenge Authenticity of Certain Powerweb Trial Exhibits, to be served electronically upon:

Kara Goodchild, Esquire
SAUL EWING LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186

The document is available for viewing and downloading from the ECF system

/s/ Zachary C. Glaser
Zachary C. Glaser

Dated: August 6, 2004